

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

THOMAS BUFFONGE,  
Plaintiff

v.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA

And

GETRONICS WANG CO, LLC,  
Defendants

Civil Action No.: 03-12355-RCL

THE DEFENDANTS' MOTION TO STRIKE  
THE PLAINTIFF'S CLAIM FOR A JURY TRIAL

Pursuant to Local Rule 7.1 of the Rules of the United States District Court for the District of Massachusetts, The Prudential Insurance Company of America and GetronicsWang Co., LLC (collectively the "defendants") move the Court for an order striking the jury trial claim set forth in the plaintiff's Complaint and Demand for Jury Trial.

As grounds for this motion, the defendants state that the plaintiff has filed a claim against them to recover insurance benefits under an employee welfare benefit plan ("Plan"). The Plan is governed by the Employee Retirement Security Act of 1974, ("ERISA") 29 U.S.C. § 1001 *et seq.* The plaintiff must pursue any claim he has under ERISA's civil enforcement provision, 29 U.S.C. § 1132(a); ERISA § 502(a). Since claims made under ERISA § 502(a) are deemed to be equitable in nature, rather than legal, courts have often ruled that there is no right to a jury on such claims.

WHEREFORE, the Defendants request that the Court strike the Plaintiff's jury claim and grant them whatever further relief the Court deems appropriate.

In support of this Motion, the defendants rely on their Memorandum of Law in Support of Motion to Strike Jury Claim, filed herewith.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA,  
and GETRONICSWANG CO., LLC,  
By Its Attorneys,

/s/  
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**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing document upon all other counsel of record, as set forth below, by first-class mail, postage prepaid, on April 23, 2004.

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/s/  
Carey L. Bertrand